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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MCELWAIN, ELIZABETH F

ART UNIT PAPER NUMBER

1638

DATE MAILED: 02/10/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/885,189

Applicant(s)

SOMERVILLE ET AL.

Examiner

Elizabeth F. McElwain

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13 and 26-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 13 and 26-41 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

The amendment and response to restriction filed December 3, 2002 have been entered.

Applicant's election of Group V, claim 13, in Paper No. 11 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP §
5 818.03(a)).

Claims 1-12 and 14-25 have been cancelled.

Claims 26-41 are newly submitted.

Claims 13 and 26-41 are pending.

Please note that claim 13 is dependent on a cancelled claim. Correction is required.

10 A supplemental restriction requirement follows.

Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 13, 26-37 and 39-41, to the extent that claims are drawn to oil from rapeseed, classified in Class 426, subclass 601, for example.

15 II. Claims 13, 26-37 and 39-41, to the extent that claims are drawn to oil from Crambe, classified in Class 426, subclass 601, for example.

III. Claims 13, 26-37 and 39-41, to the extent that claims are drawn to oil from *Brassica juncea*, classified in Class 426, subclass 601, for example.

IV. Claims 13, 26-37 and 39-41, to the extent that claims are drawn to oil from Canola, classified in Class 426, subclass 601, for example.

20 V. Claims 13, 26-37 and 39-41, to the extent that claims are drawn to oil from flax, classified in Class 426, subclass 601, for example.

VI. Claims 13, 26-37 and 39-41, to the extent that claims are drawn to oil from sunflower, classified in Class 426, subclass 601, for example.

VII. Claims 13, 26-37 and 39-41, to the extent that claims are drawn to oil from cotton, classified in Class 426, subclass 601, for example.

5 VIII. Claims 13, 26-37 and 39-41, to the extent that claims are drawn to oil from cuphea, classified in Class 426, subclass 601, for example.

IX. Claims 13, 26-37 and 39-41, to the extent that claims are drawn to oil from soybean, classified in Class 426, subclass 601, for example.

10 X. Claims 13, 26-37 and 39-41, to the extent that claims are drawn to oil from peanut, classified in Class 426, subclass 601, for example.

XI. Claims 13, 26-37 and 39-41, to the extent that claims are drawn to oil from coconut, classified in Class 426, subclass 601, for example.

XII. Claims 13, 26-37 and 39-41, to the extent that claims are drawn to oil from oil palm, classified in Class 426, subclass 601, for example.

15 XIII. Claims 13, 26-37 and 39-41, to the extent that claims are drawn to oil from corn, classified in Class 426, subclass 601, for example.

XIV. Claims 13, 26-37 and 39-41, to the extent that claims are drawn to oil from *Brassica nigra*, classified in Class 426, subclass 601, for example.

20 XV. Claims 13, 26-37 and 39-41, to the extent that claims are drawn to oil from meadowfoam, classified in Class 426, subclass 601, for example.

XVI. Claims 13, 26-37 and 39-41, to the extent that claims are drawn to oil from safflower, classified in Class 426, subclass 601, for example.

XVII. Claim 38, drawn to a paint, varnish, synthetic polymer, resin, lubricant or cosmetic having the oil of claim 37 as a component, classified in Class 106, subclass 220, for example.

The inventions are distinct, each from the other because of the following reasons:

Inventions I-XVII are each distinct products. The inventions of Groups I-XVI are each drawn to oils that are each from different plant species, wherein each different plant species would have been transformed with a fatty acid hydroxylase sequence. Each of these oils would be made separately each by extraction from a different plant species, wherein one would not require any of the others and each would have a distinct chemical composition. In addition, each of Groups I-XVI are distinct from the invention of Group XVII which is a different chemical compound having different properties and different effects, and can be made with an oil that is different from any one of the oils of Groups I-XVI, such as any one of the other oils of any of these groups. Therefore, the inventions of Groups I-XVII are capable of being separately made, independently used and the patentability one would not render either of the other obvious or unpatentable.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown for their different classification and the requirement for additional areas of search restriction for examination purposes as indicated is proper.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth F. McElwain whose telephone number is (703) 308-1794. The examiner can normally be reached on Monday through Friday from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached at (703) 306-3218. The fax phone number for this Group is (703) 308-4242. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989).

Any inquiry of a general nature or relating to the status of this application should be directed to the CUSTOMER SERVICE TECH CENTER 1600, whose telephone number is (703) 308-0198, or to the Group receptionist whose telephone number is (703) 308-0196.

Elizabeth F. McElwain, Ph.D.
February 5, 2003


ELIZABETH F. McELWAIN
PRIMARY EXAMINER
GROUP 1600